Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT J. SAFRANEK and ERIC N. LAIS

Appeal No. 2003-0640
Application No. 09/507,261

ON BRIEF

Before SMITH, RUGGIERO, and MACDONALD, **Administrative Patent Judges.**

MACDONALD, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 2, 4-15, 17 and 18. Claims 3 and 16 are objected to as depending upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Claims 19 and 20 are indicated as allowable.

Invention

The disclosed invention relates to multimode computer systems with multiple processors on the nodes (Figures 1 and 2). More particularly, the invention relates to ensuring that a remote node obtains control of data by having a state machine monitor whether an invalidate message for data is received at the node after the node issues a request for a shared copy of the data. If an invalidate message is received, then in response the node issues a request for an exclusive copy of the data (figure 5).

Claim 18 is representative of the claimed invention and is reproduced as follows:

18. A multimode computer system with multiple processors on the nodes that ensures a remote node obtains control of data, comprising a state machine that monitors whether an invalidate message for data is received after issuing a request for a shared copy of the data and in response to the invalidate message issues a request for an exclusive copy of the data.

Reference

The reference relied on by the Examiner is as follows:

Lovett	5,802,578	Sep. 1, 1998

Rejections At Issue

Claims 1, 2, 4-15, 17 and 18 stand rejected under 35 U.S.C. § 102 as being anticipated by Lovett.

Throughout our opinion, we make references to the Appellants' brief, and to the Examiner's Answer for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, Examiner's rejections and the arguments of Appellants and Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 1, 2, 4-15, 17 and 18 under 35 U.S.C. § 102.

Appellants have indicated that for purposes of this appeal the claims remaining on appeal stand or fall together. We will, thereby, consider Appellants' claims 1, 2, 4-15, 17 and 18, as standing or falling together and we will treat claim 18 as a representative claim of that group.

I. Whether the Rejection of Claims 1, 2, 4-15, 17 and 18 Under 35 U.S.C. § 102 is proper?

It is our view, after consideration of the record before us, that the disclosure of Lovett does not fully meet the invention as recited in claims 1, 2, 4-15, 17 and 18. Accordingly, we reverse.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. See **In re King**, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and **Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

With respect to independent claim 18, the Examiner has indicated how he finds anticipation of the claims on appeal [answer, page 3-4]. The Examiner deems the "in response to the invalidate message issues a request for an exclusive copy of the data" limitation of claim 18 to be met by "updating a cache line which is in a state indicating it is the 'only cached copy' either consistent with memory or inconsistent with memory" [answer, page 4, lines 7-9]. Appellants argue, "nothing in Lovett teaches responding to a received invalidate request with a request for an exclusive copy" (brief, page 5, lines 22-23). Appellants further argue, "Lovett is not concerned with, and does not teach, how nodes should respond to received invalidate requests" (brief, page 6, lines 10-11). Finally, Appellants argue, "Nothing in Lovett inherently requires that the response from one of the remote nodes be a request for an exclusive copy, as required by the independent claims" (brief, page 6, lines 21-23). Upon reviewing the Lovett reference, we find that Lovett is

silent as to how its nodes make an active response, if any, to receipt of an invalidate message. Therefore, Appellants' arguments are persuasive and we will not sustain the Examiner's rejection under 35 U.S.C. § 102.

Other Issues

At the earliest appropriate point, the Examiner should address whether apparatus claim 18 is a proper 35 U.S.C. § 112, sixth paragraph claim. If claim 18 does not enjoy protection under 35 U.S.C. § 112, sixth paragraph as being "for a combination," then the Examiner should address the issue of whether a "single means" rejection under 35 U.S.C. § 112, first paragraph is appropriate. See **In re Hyatt**, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983), and see the Manual of Patent Examining Procedure § 2164.08(a).

Conclusion

In summary, we have not sustained any of the Examiner's rejections of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1, 2, 4-15, 17 and 18 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

JERRY SMITH)
Administrative Patent Judge)
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JOSEPH F. RUGGIERO) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
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